

**OCT 15 2019** *In the Supreme Court of British Columbia*

Between



**John Zeitsoff**

Plaintiff

and

**Her Majesty the Queen in Right of the Province of British Columbia  
as represented by the  
Attorney General of British Columbia  
and  
Roderic David MacDougall**

Defendants

---

**NOTICE OF CIVIL CLAIM**

---

*[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]*

**This action has been started by the plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

(a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

**Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff(s),

(a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

### Claim of the Plaintiff

*"A nation should not be judged by how it treats its highest citizens,  
but its lowest ones." - Nelson Mandela.*

### Overview

1. The plaintiff brings this representative action on his own behalf and on behalf of at least another 60 other victims of Mr. MacDougall, a prolific sexual abuser, who was employed by the Province as a correctional officer from 1976 to 1997. Systemic failures by the Province led to more than 200 men being sexually assaulted by Mr. MacDougall during their incarceration.
2. The focus of this litigation is on the gravity and scope of the Province's failure, throughout the period of Mr. MacDougall's employment, to investigate, prevent, and report the sexual assaults committed by Mr. MacDougall on inmates and its ongoing failure to establish any independent processes to address the reporting and investigation of sexual assaults within its correctional facilities.
3. Inmates are amongst our most vulnerable citizens. Being sexually assaulted by a correctional officer is simply not a part of an inmate's sentence. The victims' *Charter* rights to life, liberty and security of the person and not to be subject to cruel and unusual punishment have been grossly violated by the Province. Such long-term, systemic misconduct by the Province shocks the conscience of the society and brings the administration of justice into disrepute.
4. The sexual assaults have had devastating emotional and psychological impacts on the victims. Although they were incarcerated for short sentences, the victims have been psychologically imprisoned by the lifelong impacts of the abuse they suffered. These impacts have been experienced not only by the men, but also by their parents, spouses, and children. Anyone who is incarcerated in a jail, even for a single day, faces the real risk of such horrific mistreatment.
5. The Province has admitted vicarious liability for Mr. MacDougall's misconduct due to its role as his employer but, to date, there has been no fulsome judicial scrutiny of the Province's own systemic misconduct, which facilitated the sexual assaults, contrary to the victims' rights under the *Charter*. The *Charter* is the highest and supreme law of the land. These constitutional rights enshrined in the *Charter* protect individual freedoms and liberties from unlawful conduct by the government. *Charter* damages

are a unique public law remedy that focuses on the scope and extent of the government's misconduct in addressing the goals of vindication for the harm done to the claimant's *Charter* rights and to the broader society, and the need for deterrence and behaviour modification. This representative action based on the *Charter* is brought to hold the Province accountable.

6. In such egregious circumstances, the Province should be promoting the *Charter* rather than avoiding it. The Corrections Branch has been broken for more than 4 decades and systemic fix is required. Proof of injury and corresponding compensation for each victim will need to be assessed individually, but the systemic failure and systemic remedy are properly examined and assessed on only a global basis through this representative *Charter* action. Access to justice and behavior modification will be achieved through *Charter* action. The primary remedy sought by the representative plaintiff is under Section 24(1) of the *Charter* for an award of global damages for vindication and deterrence for the Plaintiff and the other Pending Corrections Claimants. This representative *Charter* action is the only effective remedy to hold the Province accountable for its systemic failures and breaches.

## Part 1: STATEMENT OF FACTS

### The Parties

#### The Plaintiff

7. The plaintiff, John Zeitsoff (the "Plaintiff"), was incarcerated at the Alouette River Correctional Centre ("ARCC") in 1996 and 1997. The Plaintiff was born in 1970. His address for service is c/o Donovan & Company, 6<sup>th</sup> floor, 73 Water Street, Vancouver, BC, V6B 1A1.
8. In or around 1996 and 1997, while the Plaintiff was incarcerated at ARCC, the Defendant MacDougall used his position of trust and authority to sexually assault the Plaintiff on multiple occasions (the "Sexual Assaults").

#### Roderic MacDougall

9. The Defendant, Roderic David MacDougall, is now retired and resides at 1101 – 6611 South Oaks Crescent, Burnaby, BC.
10. Mr. MacDougall was born on November 23, 1953. Mr. MacDougall had no formal education, training or experience as a correctional officer before he interviewed with the Corrections Branch of British Columbia ("Corrections") on January 19, 1976 and his first shift started with Corrections on that day when he was 22 years old.
11. Mr. MacDougall was employed by Corrections from January 19, 1976 until June 20, 1997, when he resigned (the "MacDougall Timeframe"). Mr. MacDougall was employed by the Province at the Lower Mainland Regional Correctional Centre also commonly known as Oakalla ("Oakalla"), the Fraser Regional Correctional Centre ("Fraser"), the Surrey Pre Trial Justice Centre ("Surrey"), and ARCC (together, the "Correctional Centres") on the following dates:

- a) From January 19, 1976 to September 1990 at Oakalla as a Corrections Officer;
- b) From September 1990 to January 1993 at Fraser as a Corrections Officer;
- c) From January 1993 until July 1993 at Surrey as a Probation interviewer; and
- d) From July 1993 until June 20, 1997 at ARCC as a Corrections Officer.

12. Mr. MacDougall was criminally convicted in 2000 for sexual assault, indecent assault and extortion for his criminal misconduct during his employment with Corrections.

### The Province

- 13. The Defendant, Her Majesty the Queen in Right of the Province of British Columbia (the "Province"), represents Corrections, the Provincial governing body that administers correctional centres throughout British Columbia, which during the relevant period included the Correctional Centres.
- 14. The Province is represented by the Attorney General of British Columbia pursuant to Section 8 of the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89.

### The Corrections Litigation

- 15. Since 2002, the Province and/or Mr. MacDougall have been sued by over 200 former inmates who allege that they were sexually assaulted while they were in custody in the Correctional Centres (the "Corrections Litigation").
- 16. Approximately half of the 200 claims in the Corrections Litigation have already been adjudicated upon by the Courts or settled, but the balance still remain pending and there still may be other victims of Mr. MacDougall who have not yet come forward (collectively the "Pending Corrections Claimants").
- 17. The Plaintiff brings this representative action on his own behalf, and on behalf of the other Pending Corrections Claimants, because it is more likely to foster access to justice, promote judicial economy and lead to systemic changes in Corrections which are necessary.
- 18. The Plaintiff is seeking damages against the Province and/or Mr. MacDougall for the Sexual Assaults, the breaches of fiduciary duty, negligence and for the breaches of his *Charter Rights* (as herein defined).

### The Sexual Assaults

- 19. Mr. MacDougall is one of Canada's most prolific sexual offenders, with more than 200 former inmates who have already come forward and filed civil claims alleging that they were sexually assaulted by him while they were incarcerated in the Correctional Centres.

20. Sexual assaults are vastly under-reported. Unfortunately, many of the victims who were allegedly sexually assaulted by Mr. MacDougall at the Correctional Centres have either died and/or will never come forward, and the actual number of alleged victims of Mr. MacDougall maybe in the many hundreds, well beyond the 200 who have already filed claims.
21. Mr. MacDougall used his position and authority as a Correctional Officer, as well as the overall unsafe environment in the Correctional Centres with constant and underlying threats of further physical and sexual violence from both inmates and correctional officers, to prey on and sexually assault hundreds of young men who were in his care.
22. The repeated acts of sexual assaults of inmates by Mr. MacDougall over a period of two decades was facilitated by the long-term systematic failure by Corrections to investigate, prevent, and report the sexual assaults committed by Mr. MacDougall on inmates at the Correctional Centres and the failure to establish any independent processes to address the reporting and investigation of sexual assaults within the Correctional Centres.

*Tolerance for sexual and physical assaults on Inmates at the Correctional Centres*

23. In the Correctional Centres, sexual and physical assaults against inmates by other inmates and correctional officers was tolerated, ignored and rarely investigated by correctional officers and management. The unwritten code for both correctional officers and inmates was not to be labelled as "rats". The inmate making the complaint would be labelled a "rat" – leading to even more physical and/or sexual assaults.
24. Accordingly, correctional officers were more concerned with protecting their reputation or that of Corrections rather than supporting the complainants. Correctional officers were discouraged from reporting, making or investigating complaints about sexual and physical assaults.
25. Further, there was no proper structured process in place for any independent investigation of the reports. The pattern encouraged by Corrections was to turn a blind eye and a deaf ear to sexual and physical assaults on inmates by either other inmates or by correctional officers, in order to protect the reputation of Corrections at the expense of inmates.
26. Sexual and physical assaults were routinely ignored and condoned by the chain of command in Corrections. This created serious impediments for the proper reporting, and the effective investigation and resolution of complaints.
27. These systemic failures and the culture of tolerance and indifference within Corrections, with no regard for the physical safety, and emotional and psychological well-being of inmates, and in a clear breach of their constitutionally protected *Charter* rights, led to and facilitated Mr. MacDougall systematic sexual assaults of over 200 men during his 21-year career with Corrections.

Province's Knowledge of Correctional Officers Sexually Assaulting Inmates

28. The sexual assault of inmates is a historically well-known phenomenon occurring within jails, whether perpetrated by correctional officers or other inmates. Early academic studies from the 1930s studied these types of sexual assaults in the United States.
29. As a result of numerous complaints coming from the Women's Jail at Oakalla in 1978, the Proudfoot Royal Commission was promulgated and carried out a public inquiry to investigate the serious allegations that had been made by female inmates about sexual assaults by male guards at Oakalla.
30. The Proudfoot Royal Commission reviewed and considered academic literature both in Canada and the US dealing with sexual violence in the prisons. Madam Justice Proudfoot also visited US jails as a part of her judicial inquiry.
31. Madam Justice Proudfoot had made 57 recommendations in her report, including the need for an independent Investigations and Standards Office to properly investigate allegations of sexual misconduct. In particular recommendation numbers 51 and 52 provided as follows:
  - 51) *the Director of Inspection and Standards be a respected and experienced investigator; (p. 143)*
  - 52) *the Division of Inspection and Standards report directly to the Attorney-General; (p. 143)*
32. Since 1978 to the present date, these recommendations of Madam Justice Proudfoot have never been fully implemented by the Province or Corrections, even after they became fully aware of the scope and extent of Mr. MacDougall's sexual assaults.
33. The Proudfoot Report was released two years after Mr. MacDougall had commenced his employment with Corrections. The management at Oakalla was familiar with the Proudfoot Report and the real risk of correctional officers sexually assaulting inmates was both foreseeable and significant, giving rise to an even greater duty of care to investigate all allegations of any sexual assaults, especially by correctional officers.

Province's Knowledge of Mr. MacDougall Sexually Assaulting Inmates

Senior Correctional Office Kranbell and Director Al Ratcliffe

34. Mr. Otto Kranbell and Mr. Al Ratcliffe were both senior correctional officers that were part of the management team at Oakalla, where Mr. MacDougall first worked. Both Messrs. Kranbell and Ratcliff had received multiple complaints from fellow correctional officers that Mr. MacDougall was sexually assaulting inmates at Oakalla. Despite this knowledge, no investigation into Mr. MacDougall was ever initiated or conducted by BC Corrections.

35. In or about 1980, the Province first became aware, as a result of complaints by correctional officers, that MacDougall was committing sexual assaults on inmates. Mr. Kenny Johns, a former correctional officer, testified in another MacDougall proceeding (*B.E.S. v MacDougall*) that:

- a) The correctional officers believed that Mr. MacDougall was sexually misconducting himself with younger inmates and these concerns were brought to management as early 1980;
- b) Correctional Officers, including Mr. Johns, observed and recorded that Mr. MacDougall would interview older inmates in approximately 5 minutes while younger inmates were being interviewed for approximately 45 minutes;
- c) That this pattern of long interviews with young inmates and short interviews with older inmates was also observed and noted by other correctional officers, who had also become aware of and then keeping a track of the pattern of the suspicious MacDougall interviews;
- d) Mr. Johns stated that Correctional Officers presented their concerns about MacDougall's behaviour with young inmates to management at Oakalla including to Senior Correctional Officer Otto Kranbell and Director Al Ratcliffe; and
- e) Mr. Johns also stated that the report to management was that Mr. MacDougall was sexually assaulting the younger inmates; and
- f) There was no investigation by Corrections into Mr. MacDougall.

36. In or about 1982, another correctional officer, Mr. Frank Boshard, also received complaints from an inmate, Mr. G. C. about Mr. MacDougall sexually assaulting him.

37. Following receipt of these complaints, Mr. Boshard notified Senior Correctional Officer Otto Kranbell, and, about a week later Director Al Ratcliffe, both verbally and by notice in writing, that Mr. MacDougall was sexually assaulting an inmate.

38. Despite receiving credible and serious complaints from experienced correctional officers, Mr. Johns and then subsequently from Mr. Boshard, no investigation was ever initiated by Corrections into the serious and credible allegations against Mr. MacDougall.

39. The fact that Mr. MacDougall was sexual assaulting inmates was known to Corrections, but was not being investigated by management forced some correctional officers to attempt to take some protective measures into their own hands.

*Curtain and Window Coverings – Bob Milne and Hank (Hendrick) van Staalduinen*

40. Mr. MacDougall had an office at Oakalla to conduct interviews with inmates. In that office, Mr. MacDougall would frequently commit sexual assaults on the young inmates in his care.

41. Mr. Frank Boshard has stated that sometime shortly after 1982 when he was the acting Senior Correctional Officer, a group of 4 or 5 correctional officers sought his permission to change the door on Mr. MacDougall's office from a solid door (with no window) to a door with a window porthole that would allow those in the hallway to

observe into Mr. MacDougall's office. It was hoped that with a window, this would deter and prevent Mr. MacDougall from sexually assaulting the young inmates.

42. Mr. MacDougall's countered this initiative by placing a covering (either a file folder or an envelope) or a curtain over the window and he continued to sexually assault the young inmates.
43. Two other senior correctional officers, Mr. Robert Milne and Mr. Hank van Staaldunin, confronted Mr. MacDougall on separate occasions about the window coverings and each admonished him for covering the window. Mr. Milne in particular had quite a temper and destroyed the curtain with his own bare hands. Word of this incident with Mr. Milne spread quickly through Oakalla and was also known by Corrections but again ignored.
44. Mr. MacDougall remained undeterred and continued to cover the window and sexually assault the inmates. Mr. MacDougall was seen as a pariah by fellow correctional officers but he was also seen as untouchable and protected by the management at BC Corrections.
45. In 1987, Mr. MacDougall, in spite of the allegations that he was sexually assaulting inmates, was put in charge by Mr. Ratcliffe of investigating a complaint of a sexual assault inflicted on inmate G. Mr. MacDougall concluded that Mr. G was not sexually assaulted.

Dale Ginther

46. On January 25, 1993, Mr. MacDougall received a temporary assignment as Probation Interviewer at Surrey. Within just over a month into his new position, Mr. MacDougall demonstrated "extremely poor judgement" on at least nine client-related matters and acted in direct violation of instructions from his new supervisor, Director Dale Ginther. Mr. MacDougall was directed to stop acting as an Access Supervisor for R.S. (whom Mr. MacDougall knew when Mr. S. was an inmate in Oakalla) because it was a conflict of interest situation, but he ignored this directive and continued in this role.
47. Additionally, Mr. MacDougall engaged in a number of other "inappropriate activities", including accessing personal information on 4 clients with whom he has no official involvement; spending an inordinate amount of time interviewing a 17-year old bail client, then driving him home in his personal vehicle; communicating with other clients with whom he had no official responsibility; and it is even alleged that Mr. MacDougall was drinking alcohol together with Mr. S. on at least two occasions.
48. Director Ginther in a memorandum dated March 1, 1993 noted that Mr. MacDougall had lied to senior supervisors and could not be trusted and continued to have inappropriate client contacts. These actions were noted but did not result in any disciplinary action against Mr. MacDougall.
49. In 1994, while Mr. MacDougall was working at ARCC, an email was sent out from his computer terminal to everybody on his mailing list, purportedly from him, stating that

he was "screwing sheep" and "screwing young boys" and had been doing this for a long time.

50. Ms. Penny Wade, a former Corrections Officer later admitted that she has sent the email out and she was disciplined. However, there still was no investigation into the allegations against Mr. MacDougall.

Beverly Roest

51. In 1996, MacDougall was the subject of three serious sexual misconduct allegations that were brought forward by three different inmates: J.C, S.S. and R.L.
52. J.C, complained to the Acting Senior Correctional Officer that he had received a document entitled "Application for a Piece of Ass" which Mr. MacDougall had sent to him and 2 other inmates. This document had graphic, sexual statements asking about sexual positions, preferences and other inappropriate comments.
53. Supervisor Beverly Roest, Assistant District Director at ARCC at the time, was aware that Mr. C. was concerned with MacDougall "coming on to him", and acknowledged that MacDougall admitted to giving these documents to Mr. C. and two other inmates.
54. In response to this issue, Mr. MacDougall received a letter of expectation and suspension without pay for five days, and Ms. Roest stated "You seem somehow reluctant or unable to following your directions regarding interactions with Inmates. Please be advised that any further misconduct will not be tolerated and will result in further disciplinary action and could result in your dismissal".
55. Within less than two months of the sexual harassment allegation by Mr. C., inmate S.S. reported to a Correctional Officer that he did not wish to go to ARCC because of concerns regarding Mr. MacDougall, who had made sexual overtures to him.
56. This was documented in a Confidential Memorandum prepared by Mr. Geordie Craig, Director of Operations at Fraser, dated March 20, 1996. Inmate S.S. went on to say MacDougall kept pressuring him to "get together" once he [Inmate S.S.] was released, and even stated that "following his release, on two occasions, on Kingsway in Burnaby, Mr. McDougall 'hit on him' and gave him his phone number, again indicating they should get together". Despite this allegation, Mr. MacDougall was again not disciplined and still retained his position.
57. In March 1996, Corrections Officers Allison & Meskas reported serious concerns about Mr. MacDougall made by Inmate R.L., who alleged that Mr. MacDougall had sexually assaulted him on at least four separate occasions: November 1985 at Oakalla; September 1995 at ARCC; and two incidents in March 1996 at ARCC.
58. This revelation resulted in a formal interview of Inmate R.L. with his legal counsel and Assistant District Director Beverly Roest on April 5, 1996. In this interview, Mr. R.L. indicated that everybody knew about Mr. MacDougall sexually assaulting inmates and he hoped that his formal disclosure would now result in Mr. MacDougall being terminated.

59. Following the complaint from Mr. R.L., management at Corrections temporarily suspended Mr. MacDougall working directly with inmates. However, Mr. MacDougall complained, and the suspension was revoked and the "R.L. Complaint" was removed from Mr. MacDougall's personnel file shortly after October 1996.

#### Personnel Records

60. Corrections was required by internal policies to carry out an annual performance review of Mr. MacDougall. Yet over his 21-year career, Mr. MacDougall's personnel file shows that there was only a single performance review conducted in 1995, and it was incomplete. Corrections have failed to produce a complete personnel file for Mr. MacDougall.

61. During the MacDougall Timeframe, any complaint or investigation of any allegation of any wrongdoing by any employee of Corrections was not kept in the personnel file. It was only if the complaint or investigation led to a disciplinary action that might be in the personnel file. This flawed policy and the failure to properly document complaints and investigations allowed Mr. MacDougall to systemically sexually assault hundreds of inmates over decades.

#### The Wilson Investigation and Report

62. On February 3, 1997, Mr. MacDougall wrote a letter to Mr. Abe Neufeld, Regional Director of Corrections for the Fraser Region, complaining about harrassment he had experienced at Corrections.

63. As a result of this complaint from Mr. MacDougall, Mr. Patrick Wilson, a retired police chief was engaged to investigate and report on the harrassment of Mr. MacDougall. The investigation was initiated at the behest of Mr. MacDougall and initially had nothing to do with the complaints about Mr. MacDougall engaging in sexual assaults on inmates.

64. Mr. Wilson found in his June 1997 Report the following:

- a) '... among his peers at FRCC, Mr. MacDougall was seen as someone not to be trusted ... and, the sexual offending with inmates, although rumours only, was of considerable concern to those who knew him in the workplace over many years.';
- b) 'there are reasonable grounds to conclude that, while on duty as a corrections officer, Mr. MacDougall committed one or more indecent sexual acts with [redacted].'; and
- c) 'The alleged incident of sexual assault on inmate [redacted] at LMRCC in 1985 has been a thread of persistent gossip that has followed Mr. MacDougall from workplace to workplace. ... The majority of his peers seem to believe the rumours and gossip.'

65. Mr. Wilson interviewed Mr. MacDougall twice and Mr. MacDougall denied the sexual assaults. Mr. Wilson's report was delivered to BC Corrections on June 19<sup>th</sup>, 1997 and included the following findings:

4. *there are reasonable grounds to conclude, that, while on duty as a corrections officer, Mr. MacDougall committed one or more indecent sexual acts with inmate R.L.*
5. *that Mr. MacDougall denial of committing any sexual acts with any inmate, including R.L. is not accepted as factual, considering the disclosures of inmates.*
6. *that, while on duty, Mr. MacDougall distributed a sexually explicit type written form to an inmate, an act that is totally unacceptable behaviour by a person in trust and control of inmates.*
7. *that C.O.'s and first line supervisors, because of fear, threat or intimidation by a small number of senior C.O.'s, are reluctant to communicate breaches of discipline or more serious matters affecting their peers, to middle and senior management for corrective action.*
8. *that, given the extent of known sexual allegations, combined with employee/peer dislike of Mr. MacDougall, personally, it is likely that he will continue to be subject of gossip and innuendo, which will result in continued harassment in the workplace . . . . and management will have considerable difficulty controlling it.*
9. *that, because of repeat offenders returning to corrections, inmates talk and lack of respect for Mr. MacDougall will likely result in continued inmate distrust and complaints respecting him.*

66. The following day, on June 20<sup>th</sup>, 1997, Mr. MacDougall resigned from Corrections. He was never fired. In his resignation letter to Corrections, Mr. MacDougall noted: 'It was nice while it lasted'.

### **Limited Criminal Proceedings Against Mr. MacDougall**

#### **Reasons for Sentencing in 2000**

67. Following the resignation of Mr. MacDougall, a criminal investigation commenced by the RCMP. Mr. MacDougall was charged with 17 counts of sexual assault, indecent assault and extortion. On November 15, 2000, Mr. MacDougall was found guilty of sexual assault, indecent assault and extortion and was sentenced by Madam Justice Boyd of the BC Supreme Court for a period of two years less a day. The Provincial Crown appealed that sentence to the BC Court of Appeal which increased the sentence to three years and seven months on April 3, 2001.
68. The public was generally aware of the convictions for sexual assault and indecent assault as those convictions have been acknowledged by the Province in its pleadings in the Corrections Litigation. However the fact that Mr. MacDougall was also

convicted for extortion was kept out of the public view for 17 years and never disclosed by the Province in any pleadings.

69. The November 15, 2000 Reasons for Sentence of Madam Justice Boyd detailing the extortion conviction was never listed or produced by the Province in the MacDougall Litigation until late 2017. This was a clear breach of the Province's ongoing disclosure obligation in the Corrections Litigation.

70. In Madam Justice Boyd's Reasons, she stated:

*[14] In every case, the sexual act or acts occurred with each complainant believing that his future physical security within the prison system depended on his cooperation with the accused. Any attempt to escape the Corrections vehicle would, of course, result in being charged with being unlawfully at large. Any reporting of the events to the authorities would likely be fruitless since, as the accused reminded them, a prisoner's word meant nothing against that of a guard. Any reporting of the events to a fellow inmate would even be worse. The inmate would be branded as a guard intimate, a rat, or a homosexual all brands within the prison which were threats to one's physical security.*

71. Previous claimants, their legal counsel, and the judges who dealt with the Corrections Litigation prior to December 2017 did not have the benefit of these key judicial findings, and the underlying evidence, which demonstrated both the deeper psychological threat and harms suffered by the victims of Mr. MacDougall caused by the extortion.

#### Further Charges Recommended

72. There was a further Report to Crown Counsel dated September 2002, submitted by the RCMP, recommending further charges against Mr. MacDougall. The BC Prosecution Service declined to prosecute at the time. Outside legal counsel retained by the Criminal Justice Branch recommended that no additional charges be laid against MacDougall arising out of these allegations (the "first no-charge decision").

73. After many more victims of Mr. MacDougall came forward in 2006, the Deputy Regional Counsel asked the RCMP to carry out a further investigation. The RCMP then began their third investigation of Mr. MacDougall. On June 9, 2010, after a 3-year criminal investigation, the RCMP filed another Report to Crown Counsel recommending charges on behalf of another 13 individuals.

74. Three years later after receipt of the 2010 Report to Crown Counsel, in 2013, the BC Prosecution Service decided not to press further charges against Mr. MacDougall (the "second no-charge decision").

### Mr. MacDougall's Ongoing Cooperation with the Province

75. The initial civil proceedings in the Corrections Litigation were filed in 2002. In the Corrections Litigation, Mr. MacDougall has either been named as a co-Defendant, or at times he has been named as a Third Party, by the Province.
76. Since 2008, Mr. MacDougall has been actively cooperating with the Province in the defence of the civil claims being made against himself and the Province of British Columbia. Between 2008 and 2017, there are 61 separate email conversations between legal counsel for the Province and Mr. MacDougall dealing with the defence of the numerous civil claims in the Corrections Litigation.
77. Between 2002 and 2013, while there were active investigations by the RCMP into Mr. MacDougall's sexual assaults and the BC Prosecution Service was considering whether further criminal charges against Mr. MacDougall, the other branch of the Attorney General's Office which had admitted vicarious liability for his sexual assaults of Mr. MacDougall was seeking his ongoing cooperation in defence of the civil claims.
78. Even though the Province has asserted third party claims against Mr. MacDougall in the Corrections Litigation, it had never initiated any execution proceedings against Mr. MacDougall, despite paying out significant judgements and settlements on his behalf for his sexual misconduct.

### Post MacDougall Timeframe

#### Failure to Investigate

79. By the early 2000s it had become even clearer to Corrections that the number of Mr. MacDougall's victims was large and growing. Despite this knowledge, Corrections has never undertaken any investigation into how many victims there were, their need for ongoing counselling and assistance, how this was allowed to unfold over 21 years and where was the breakdown in management, reporting and investigative processes.
80. Between 2001 and 2013, Corrections stopped carrying out any regular inspections of any of the correctional centres in the entire Province. This only came to light as a result of the BC Ombudsman's Report No. 38, *'Under Inspection: The Stopping, Hiatus and Restarting of BC Correctional Centre Inspections'*, dated June 2016.
81. After receipt of the Ombudsman's report, the Province had undertaken to comply with all of the recommendations by March 31, 2018. However, Corrections has still failed to do this as was noted in the Ombudsman's update dated September 6, 2018.
82. Following the MacDougall Timeframe, there have also been other systematic patterns of sexual assaults by other correctional officers. In particular, another Correctional Officer, Mr. Christian Hauer, sexually assaulted a number of youth who were in his care at the Vancouver Island Youth Detention Centre in or around 2008.

### Failure to Provide Counselling

83. Corrections was also well aware that victims of sexual assaults suffer significant psychological and mental consequences as a result of the sexual assaults. The nature and circumstances of the sexual assaults perpetrated by Mr. MacDougall are particularly harmful because the victims were extorted to participate in sexual acts, which leave them overwhelmed by fear, guilt and shame.
84. Many of the victims of Mr. MacDougall have developed addictions and have become suicidal. Yet despite this knowledge, Corrections has not taken any steps to seek out and identify his victims or offer them any counselling assistance. The failure to do so by Corrections offends all standards and norms of common decency and is an ongoing breach of their fiduciary duty to this very vulnerable group of MacDougall victims.

### Need for Representative Action

85. The Plaintiff, John Zeitsoff, is one the Pending Corrections Claimants (as set out in Schedule A, attached). He is an appropriate representative plaintiff because he was sexually assaulted by Mr. MacDougall near the end of Mr. MacDougall's career with Corrections. Many of the Pending Corrections Claimants have had other trial dates previously set and adjourned.
86. The Pending Corrections Claimants have been managed by Justice Masuhara since 2007. Since 2017, it was agreed that case of *Errol Patrick Johnson and Cal Dean Kane v Her Majesty The Queen In Right Of The Province Of British Columbia As Represented By The Attorney General Of British Columbia and Roderick David MacDougall*, SCBC file number S-148500 ("*Kane and Johnson*") was identified as the lead case, or a test case that would go forward as a template for the other Pending Corrections Claims.
87. The pleadings in Kane and Johnson were filed on November 4th, 2014. The initial trial was set for October 9th, 2018. The trial was then adjourned due to an application for the production of documents made on September 10th until February 4th, 2019. The Court provided its oral reasons on the production of documents on December 28th, 2018. On January 25th, 2019 on application by the Province and the AGBC, the Court granted a second adjournment and the trial was rescheduled for September 9th, 2019 so that the Province and the AGBC could prepare for the upcoming trial.
88. On March 7 and 8, 2019, the Province and the AGBC filed an application in *Kane and Johnson* to strike out the *Charter* claims. On April 1st, 2nd and 15th, the Province's application was heard by the Court. On May 13, 2019 the BC Supreme Court issued its judgement in favour of the Province and the AGBC striking out the *Charter* claims. The plaintiffs Kane and Johnson have filed an appeal with the British Columbia Court of Appeal and the September 9th trial date was adjourned for a third time.
89. The individual cases for the Pending Corrections Claimants have been case managed by the Court since 2008 and none have proceeded to trial. However, an individualized

inquiry will not permit the Court to examine the systemic negligence and breaches by the Province. It is only through a representative *Charter* action that the Pending Corrections Claimants will gain access to the Courts.

### **Common Issues**

90. The Plaintiff, Mr. Zeitsoff, and all the other Pending Corrections Claimants have all brought claims for breaches of sections 7 and 12 of the Charter and are seeking *Charter* damages and other relief, pursuant to section 24 of the *Charter*.
91. The functional goals of *Charter* damages are three-fold: compensation, vindication and deterrence. The scope and the extent of the Province's misconduct during and subsequent to the MacDougall Timeframe is a common issue for all the Pending Corrections Claimants, and it would be just, fair and expedient to have the issues regarding the Province's misconduct heard at one trial.
92. Since Mr. Zeitsoff was sexually assaulted in 1996 and 1997 near the end of the MacDougall Timeframe, the relevant and appropriate timeframe for the consideration of the events would include the entirety of Mr. MacDougall's career and therefore would span all of the other Pending Corrections Claims.

### **Fair, Expedient and Efficient**

93. The individual cases have been managed by Case Management Judge for the last 12 years, but none of the cases have moved to trial. The lead case of *Kane and Johnson* may be tied up in appeals to the British Columbia Court of Appeal and possibly for the Supreme Court of Canada for years to come.
94. Since 2016, the following plaintiffs have already passed away as a result of their own attempts to self-medicate and/or addictions: Mr. R.C., Mr. H.B., Mr. S. J., Mr. P. M., Mr. D. S. and Mr. J. S..
95. A number of key witnesses have also passed away or are in failing health. Accordingly, the need to preserve the evidence over the entire MacDougall Timeframe is critical, and this representative proceeding will help achieve that objective.
96. Previously, it was understood that *Kane and Johnson* would be a test case to determine the *Charter* issues, which would be the central issue in each of the claims. However, as a consequence of the recent adjournment and the subsequent application by the Province and the AGBC, there is serious concern that the procedural steps taken by the Province and the AGBC will unreasonably delay this litigation for all of the Pending Corrections Claimants.
97. A representative action is the most effective way to ensure that the Pending Corrections Claimants, who are some of the most vulnerable citizens of society, are afforded access to the Courts and protection of the *Charter*.

## **Damages Suffered By Pending BC Corrections Claimants**

### **Effects of the Sexual Assaults**

98. Each of the Plaintiff and the Pending Corrections Claimants suffered severe adverse effects as a result of the sexual assaults. Those effects include:

- a) PTSD, anxiety and depression;
- b) Development of psychological injuries;
- c) Development of depression and anxiety;
- d) Development of feelings of guilt, self-blame, shame, fear and loneliness;
- e) Development of emotional dysfunction;
- f) Loss of self-esteem, self-respect, and self-worth;
- g) Impaired or diminished ability to trust others and to form or sustain intimate relationships;
- h) Impaired or diminished ability to deal with social interactions;
- i) Impaired or diminished ability to interact with authority;
- j) Impaired or diminished sexual enjoyment and function;
- k) Impaired or diminished ability to experience sexual enjoyment and loss of consortium;
- l) Addiction to alcohol and drugs;
- m) Personality change;
- n) Impaired or diminished ability to deal with and control anger and violent impulses;
- o) Nightmares and loss of sleep;
- p) Ongoing shame, humiliation and embarrassment;
- q) Development of suicidal thoughts;
- r) Confusion as to sexual orientation;
- s) Impaired or diminished ability to enjoy and participate in recreational, social, athletic and employment activities;
- t) Impaired or diminished ability to obtain and maintain employment;
- u) Impaired or diminished ability to function when employed;
- v) Loss of opportunity to pursue or obtain an adequate education;
- w) Reduced prospect of gainful employment leading to past income loss and future income loss; and
- x) Loss of happiness and amenities of life; and
- y) Such other symptoms and injuries as may be proven at trial.

## **PART 2: RELIEF SOUGHT**

1. The Plaintiff on his own and on behalf of the Pending BC Corrections Claimants claims:
  - a) an order certifying this action a representative proceeding pursuant to Rule 20-3 of the *BC Supreme Court Rules* and appointing the Plaintiff as the representative Plaintiff for the Pending Corrections Claimants;

- b) a declaration that the Province breached its fiduciary duties to the Plaintiff and the Pending Corrections Claimants through its systematic indifference allowing them to be sexually assaulted by Mr. MacDougall;
- c) a declaration that the practices of the Province in relation to the enabling and failing to prevent the sexual assaults of the Plaintiff and Pending Corrections Claimants constitute a breach of the Plaintiff's Section 7 right to life, liberty and security of the person and his Section 12 right not to be subject to cruel and unusual treatment or punishment;
- d) a declaration that the Province is liable to the Plaintiff and to the Pending Corrections Claimants for Section 24 *Charter* damages caused by its systemic failures in relation to its failure to properly investigate, prevent and report sexual assaults and to properly investigate and supervise Mr. MacDougall, all of which permitted Mr. MacDougall to sexually assault hundreds of inmates in his care at the Correctional Centres;
- e) an order that the Defendant pay, in trust, for all of the Pending BC Corrections Claimants damages for vindication and deterrence or such other remedies as the Court may consider just and appropriate pursuant to s. 24 of the *Charter*;
- f) an order that the Defendant pay compensatory damages to the Plaintiff or such other remedy as the Court may consider just and appropriate pursuant to s. 24 of the *Charter*;
- g) an order that the Province pay compensatory damages to each of the Pending Corrections Claimants, after an individual assessment by a Judge or some other judicially approved ADR process, or such other remedy as the Court may consider just and appropriate pursuant to s. 24 of the *Charter*;
- h) an order that the Province pay the Plaintiff and Pending Corrections Claimants damages for personal injuries, including but not limited to damages for emotional and mental abuse, pursuant to the *Health Care Costs Recovery Act*;
- i) punitive and aggravated damages against the Defendants;
- j) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- k) such further and other relief as this Honourable Court may deem just.

### **PART 3: LEGAL BASIS**

#### **Defendants' Overall Duties**

1. Corrections is mandated, by both legislation and reasonably applicable community standards, to provide programs, services, and treatment of inmates in the Correctional Centres that fosters their rehabilitation and reintegration into the community. The sexual assaults of inmates by correctional officers would be a breach of the

community standards and an obvious barrier to their rehabilitation and reintegration into the community.

2. The Province is legally responsible for the sexual assaults by MacDougall on the basis of its vicarious liability, breaches of fiduciary duty, negligence, and breaches of the Plaintiff's and the Pending Corrections Claimants' *Charter* rights.

### **Vicarious Liability**

3. The Province is legally responsible for the enterprise known as Corrections, the Correctional Centres, its management and the employees, including Mr. MacDougall. The enterprise risk of the correctional staff at the Correctional Centres sexually assaulting inmates was both well-known and foreseeable for the Province.
4. Corrections was the employer of Mr. MacDougall during the MacDougall Timeframe. Mr. MacDougall was the employee, agent and servant of Corrections during the MacDougall Timeframe and Corrections and the Province are vicariously liable for the sexual assaults perpetrated by Mr. MacDougall.
5. To the extent that relief is sought in tort, it is expressly pleaded that such relief is sought for the vicarious liability of the Province for Corrections' employees, including Mr. MacDougall, servants, officers, and agents. Each of the Plaintiff and the Pending Corrections Claimants pleads and relies on section 2 of the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89.

### **Fiduciary Duty**

6. At all material times, the Defendants MacDougall and Province were in a position of authority, trust and control over the Plaintiff and the Pending Corrections Claimants and owed the Plaintiff and the Pending Corrections Claimants fiduciary and other duties and were in breach of those duties.
7. The Province and its servants and agents created, planned, established, operated, financed, supervised, controlled, and regulated the entire system of Correctional Centres during the MacDougall Timeframe.
8. While incarcerated at the Correctional Centres during the MacDougall Timeframe, the wellbeing and safety of the Plaintiff and the Pending Corrections Claimants was wholly determined by Corrections. The Plaintiff and the Pending Corrections Claimants were entirely dependent and vulnerable upon the Province and were subjected to the unilateral exercise of the Province's power and discretion.
9. During the MacDougall Timeframe, Corrections was responsible for, *inter alia*, the following:
  - a) the health, safety and well-being of inmates in Correctional Centres;
  - b) the management, operation, and administration of Corrections;

- c) procedures and regulations promulgated, and decisions and actions taken by Corrections and its employees, servants, officers, and agents in Correctional Centres;
  - d) overseeing the operation, funding, administration, supervision, inspection, and management of the Correctional Centres; and
  - e) the selection, control, training, supervision, and regulation of Corrections staff, including Mr. MacDougall.
10. Because the relationship between the Plaintiff (and the Pending Corrections Claimants) and the Province was one of trust, reliance and dependence, the Province owed non-delegable fiduciary duties to the Plaintiff and each Pending Corrections Claimant including, but not limited to, duties to:
- a) act in the best interests of Plaintiff and each Pending Corrections Claimant and in the best interests of the population of the Correctional Centres as a whole;
  - b) ensure that the Plaintiff and each Pending Corrections Claimant was treated fairly and respectfully;
  - c) rehabilitate the Plaintiff and each Pending Corrections Claimant in order to successfully reintegrate them into the community;
  - d) provide care and maintain conditions of detention at a reasonable standard;
  - e) conduct inspections and supervision of the Correctional Centres and all activities that took place during the MacDougall Timeframe; and
  - f) ensure that inmates were not being sexually assaulted by Correctional Officers and establishing a proper process for the independent investigation and review of such complaints.
11. Further, the Province breached its fiduciary duties to the Plaintiff and to each Pending Corrections Claimant by putting its own interest, and the interests of Mr. MacDougall, ahead of the victims of Mr. MacDougall.
12. The Defendant MacDougall further breached his fiduciary duties that were owed to the Plaintiff and each Pending Corrections Claimant, and abused his fiduciary position to engage in the Sexual Assaults by:
- a) Indicating that refusal to comply with Mr. MacDougall's sexual demands would result in the Plaintiff and each Pending Corrections Claimant being subjected to physical and/or sexual assaults by other inmates;
  - b) Indicating that he would give the Plaintiff and each Pending Corrections Claimant preferential treatment at the Correctional Centres;

- c) Indicating that he would allow the Plaintiff and each Pending Corrections Claimant to avoid punishment and harsh treatment at the Correctional Centres;
- d) threatening the Plaintiff and each Pending Corrections Claimant that life at Correctional Centres would be more difficult for him if they told anyone about the sexual assaults;
- e) threatening the Plaintiff and each Pending Corrections Claimant that he could transfer him to more difficult and riskier prison environment if he told anyone about the sexual assaults; and
- f) such further and other particulars as counsel may advise prior to trial.

### **Negligence**

13. The Province owed a duty of care to the Plaintiff and to each Pending Corrections Claimant to conform to the standard of care of a reasonable and prudent prison operator, administrator, and manager.
14. Through its servants, officers, employees, and agents, Corrections performed its fiduciary duties neglectfully or carelessly, in breach of its special responsibility to ensure the safety and wellbeing of the Plaintiff and each Pending Corrections Claimant.
15. At all material times, the Province owed the Plaintiff and each Pending Corrections Claimant a duty of care for their safety and wellbeing and breached that duty of care and was negligent by failing to investigate the rumours and complaints, and it knew or ought to have known, the Defendant MacDougall was sexually assaulting inmates and did not terminate his employment.
16. That duty included, at minimum, the obligation to act in accordance with applicable legislation, and domestic and international policy norms including, *inter alia*:
  - a) the *Canadian Charter of Rights and Freedoms*;
  - b) the *Correction Act*, S.B.C. 2004, c. 46;
  - c) the *Correction Act Regulation*, B.C. Reg. 58/2005;
  - d) BC Corrections policies;
  - e) customary international law; and
  - f) domestic and international policy norms.
17. The discharge of the Province's duties was the responsibility of its servants and agents, each of whom owed a common law duty of care to the Plaintiff and each Pending Corrections Claimant for whom they were responsible.

18. The Province's jurisdiction and position of power over the operation of the Correctional Centres, and by virtue of its administrative functions, Corrections owed various duties of care to the Plaintiff and the Pending Corrections Claimants including, but not limited to, the following:

- a) To use reasonable care in ensuring the safety, wellbeing and protection of the Plaintiff and the Pending Corrections Claimants from any person who might endanger or might be injurious to the health or well-being of the Plaintiff and the Pending Corrections Claimants while they were under its care;
- b) To protect the Plaintiff and the Pending Corrections Claimants from physical and sexual assaults;
- c) To protect the Plaintiff and the Pending Corrections Claimants from emotional and psychological abuse;
- d) To protect the Plaintiff and the Pending Corrections Claimants from coercive and threatening conduct and intimidation;
- e) To adequately, properly, or effectively supervise the environment at the Correctional Centres, and the conduct of its employees and agents, in order to ensure that no harm would befall the Plaintiff and the Pending Corrections Claimants;
- f) To provide and maintain a safe environment for the Plaintiff and the Pending Corrections Claimants and, in particular, to provide an environment free from physical and sexual assaults, abuse and threats;
- g) To provide or implement standards of conduct for its employees and agents in order to ensure that no employee or agent would endanger the health or wellbeing of the Plaintiff and the Pending Corrections Claimants;
- h) To provide and implement an organized program within the Correctional Centres through which sexual assaults could be recognized and reported;
- i) To educate the Plaintiff and the Pending Corrections Claimants in the use of a system through which sexual assaults could be recognized and reported;
- j) To use reasonable care in assigning supervisory roles for its employees and agents within the Correctional Centres;
- k) To use reasonable care in performing employee screening, including reference and background checks of its employees and agents who were expected to have contact with inmates, including the Plaintiff and the Pending Corrections Claimants;
- l) To conduct any or reasonable investigations into the character, background or psychological profile of its employees and agents and, in particular, the Defendant Mr. MacDougall;

- m) To conduct any or reasonable investigations into the ability or qualifications of its employees and agents, including the Defendant Mr. MacDougall, to work with inmates;
- n) To use reasonable care and diligence in investigating known or suspected allegations of sexual assaults that were taking place at the Correctional Centres;
- o) To take reasonable steps to prevent the sexual assaults when it knew, or ought to have known, that the sexual assaults or similar assaults were occurring;
- p) To investigate allegations of sexual assaults by its employees and agents after such sexual assaults and assaults were reported or became known;
- q) To exercise reasonable supervision, direction or control over the Defendant Mr. MacDougall, which would have disclosed the sexual assaults and similar assaults;
- r) To report any known instances of sexual assault to the appropriate authorities, including the Royal Canadian Mounted Police; and
- s) Such further and other particulars as counsel may advise prior to trial.

### **Charter Breaches**

19. At all material times during the MacDougall Timeframe, the Plaintiff and the Pending Corrections Claimants were within the knowledge, contemplation, power, and control of BC, a government actor bound by the *Canadian Charter of Rights and Freedoms* (the "*Charter*").
20. The Plaintiff and all the Pending Corrections Claimants, are persons who have *Charter* rights including, but not limited to:
  - a) the right pursuant to Section 7, not to be deprived of life, liberty and security of the person except in accordance with the principles of fundamental justice, which right includes:
    - (i) the right not to be sexually assaulted by correctional officers or other inmates; and
    - (ii) the right to be rehabilitated and reintegrated into the community; and
  - b) the right pursuant to Section 12, not to be subject to cruel and unusual punishment by being subjected to sexual assaults.
21. At all material times, the Province breached the Plaintiff's and each Pending Corrections Claimant's constitutionally protected *Charter* rights by failing to properly investigate allegations, rumours and knowledge of sexual assaults and failed to reasonably supervise the Defendant Mr. MacDougall which resulted in the Plaintiff and the Pending Corrections Claimants being subjected to sexual assaults.

22. The sexual assaults deprived Plaintiff and the Pending Corrections Claimants of their rights to liberty and security of the person guaranteed by s. 7 of the *Charter*.

- a) As to the deprivation of Plaintiff's liberty interest, by being touched and forced by MacDougall to engage in sexual activity without his consent and against his will, Plaintiff was subjected to state-imposed constraints on his personal and sexual autonomy. Whether to engage in sexual activity with another person is a fundamental personal decision that an individual has the right to make without state interference. The Plaintiff and the Pending Corrections Claimants were deprived of that right when Mr. MacDougall sexually assaulted each of them.
- b) As to Plaintiff's security of the person interest, the sexual assaults interfered with Plaintiff's bodily and psychological integrity. The sexual assaults were the non-consensual application of physical force to Plaintiff's body and inflicted serious psychological stress on Plaintiff and each of the Pending Corrections Claimants.

23. The sexual assaults perpetrated by Mr. MacDougall on the Plaintiff and each of the Pending Corrections Claimants, infringed upon their rights not to be subjected to cruel and unusual treatment or punishment as guaranteed by s. 12 of the *Charter*. The sexual assaults constitute treatment, or in the alternative, punishment, that shocks the conscience and is degrading to human dignity.

24. The Province has specific and complete knowledge of the widespread physical and sexual assaults committed in the Correctional Centres including those by Mr. MacDougall. Despite this knowledge, Corrections continued to operate the Correctional Centres in an irresponsible and indifferent fashion and authorize the perpetration of grievous harm to the Plaintiff and each of the Pending Corrections Claimants.

#### Principles of Fundamental Justice

25. By failing to take appropriate action to supervise Mr. MacDougall, or to remove him from a position where he was able to continue his sexual assaults, and to protect the Plaintiff and each Pending Corrections Claimant, the Province had no *bona fide* operational reason for failing or refusing to act, except to protect its own reputation but all at the expense of the Plaintiff and each Pending Corrections Claimant.

26. It is a Principle of Fundamental Justice that the state should not take actions and make operational decisions negligently or contrary to its fiduciary obligations, particularly in respect of inmates who are vulnerable as a result of being incarcerated and therefore owed special duties by the Province. The sexual assaults by Mr. MacDougall were not a part of the sentence.

#### Need for Vindication and Deterrence

27. During the MacDougall Timeframe and subsequent to it, the Province displayed complete indifference to each of the Plaintiff's and the Pending Corrections Claimants' *Charter* rights and their vulnerability, and their actions were not undertaken in furtherance of any state purpose.

28. The present day Investigations and Standards Office, for which Madame Justice Proudford had made recommendations in 1978, specifically does not address or investigate any breaches of *Charter* Rights of any inmates. Within Corrections, there is no internal independent process in place for any inmate in provincial jails to seek protection of the *Charter*.
29. The breaches by the Province are inherently so egregious, systematic, long term and wrongful that an elevated damages award is necessary to ensure they are not repeated – to ensure that the Province acts appropriately in the future, whatever the administrative cost or inconvenience might be.
30. Such indifference on the part of the Province and wilful disregard on the part of Mr. MacDougall of each of the Plaintiffs' and the Pending Corrections Claimants' *Charter* rights, compensatory damages alone will not restore those rights and their significance to the Plaintiff, the Pending Corrections Claimants and to Canadian society.
31. The actions of Mr. MacDougall and the Province were not merely *tortious* in the sense that the Plaintiffs and the Pending Corrections Claimants should be restored (insofar as a monetary damages award can do so) financially, physically and psychologically to the position they would have been in had the wrongdoing never occurred.
32. The Defendants' actions were *unconstitutional* and the rights that were infringed upon need to be restored to their status as deserving of special, constitutional protection in our society. Distinct from and in addition to the general and specific damages suffered by each of the Plaintiff and the Pending Corrections Claimants, the harm done to all of the Plaintiffs' *rights* themselves must be remedied in a way that also denounces the defendants' actions.

#### Need for Section 24 Damages

33. *Charter* damages are necessary and appropriate to serve the functional purposes of compensation, vindication and deterrence. Each of the Plaintiff and the Pending Corrections Claimants has suffered significant general and pecuniary damages caused by the Defendants' misconduct. Each of the Pending Corrections Claimants is entitled to receive an award for compensatory damages for the injuries and damages flowing from the sexual assaults perpetrated by Mr. MacDougall.
34. However, compensatory damages alone are inadequate to serve the functions of vindication and deterrence for the following reasons:
  - a) The *Charter* breaches were gratuitous abuse engaged in for the sake of McDougall's personal sexual gratification and abuse of his position of authority, against a highly vulnerable individual, for no legitimate purpose.
  - b) The *Charter* breaches were egregious and severe in light of:

- i. their nature, number, frequency, violence and invasiveness of the sexual assaults and the period of time over which they continued;
- ii. the circumstances of each of the Plaintiff and the Pending Corrections Claimants at the time of the sexual assaults including their vulnerability as inmates with no ability to protect themselves or seek assistance, and their young age and capacity;
- iii. the circumstances of Mr. MacDougall at the time of the sexual assaults including his position of authority, his predatory tendencies, and his history of similar assaults on other inmates; and
- iv. the knowledge, recklessness and/or indifference of the Province to Mr. MacDougall's sexual assaults and abuse of his position of authority.

35. In the circumstances, the Plaintiff and the Pending BC Corrections Claimants are entitled to monetary damages pursuant to s. 24(1) of the *Charter* in order to:

- a) compensate them for their injuries, suffering and loss of dignity;
- b) vindicate their fundamental rights;
- c) deter systemic violations of a similar nature; and
- d) incentivize the Defendant the Province to ensure that future *Charter* violations are remedied as soon as possible.

#### No Section 1 Defence

36. The aforementioned breaches are not saved by s.1 of the *Charter*, which only applies to limitations on *Charter* rights that are "prescribed by law". The sexual assault of an inmate by a Correctional Officer is not prescribed by law.

37. In the further alternative, the breaches described above cannot be justified in a free and democratic society, and, as such, s.1 of the *Charter* is of no application. Further, the sexual assault of an inmate by a correctional officer cannot be a reasonable limit on the inmate's *Charter* rights that is demonstrably justified in a free and democratic society.

#### MacDougall

38. The Plaintiff and the Pending Corrections Claimants allege that the Defendant Mr. MacDougall committed the sexual assaults and, as such, the Defendants Mr. MacDougall and the Province are jointly and severally liable for damages.

#### Punitive and Aggravated Damages

39. In addition to the Plaintiff's and the Pending Corrections Claimants' damages as set out above, the Plaintiff and the Pending Corrections Claimants plead that the conduct of each of the Defendants, Mr. MacDougall and the Province, showed a reckless disregard for the well-being and emotional and psychological health of the Plaintiff and the Pending Corrections Claimants. The conduct of the Defendants MacDougall and

the Province was callous, arrogant and offended the ordinary community standards of moral and decent conduct. The high-handed and callous conduct of the Defendants warrants the condemnation of the Court.

40. In breach of their fiduciary duty, the duty of care and the *Charter* Rights, all of the Defendants refused or failed to take any steps, or, in the alternative, any reasonable steps, to treat the psychological damage suffered by the Plaintiff and the Pending Corrections Claimants. The Province knew or ought to have known that the failure to provide adequate or any medical or psychological treatment or both would aggravate and contribute to the harms and losses suffered by the Plaintiff and the Pending Corrections Claimants.
41. The conduct of all the Defendants is, and remains, disgraceful, repugnant and reprehensible, that they acted, and continue to act, in an arrogant and highhanded fashion towards the Plaintiff and the Pending Corrections Claimants, and that they showed and continue to show a callous disregard for him, and for the consequences of the damage caused to the Plaintiff and the Pending Corrections Claimants by their actions.
42. The actions of all the Defendants, and each of them, showed conscious indifference to the rights, safety and welfare of the Plaintiff and, accordingly, each of the Plaintiff and the Pending Corrections Claimants hereby claims for aggravated and punitive damages against all of the Defendants and each of them.

### **Health and Future Care Costs**

43. The Plaintiff is a beneficiary as defined under the *Health Care Costs Recovery Act*, SBC 2009, c. 27 who, as a further result of the injuries sustained, has received and will continue to receive health care services with the meaning of the Act. The Plaintiff claims from the Defendant the past cost of the health care services and the future cost of health care services in trust for the British Columbia government, and he pleads and relies on section 2 and 3 of the Act.
44. The Plaintiff has and will continue to incur expenses in obtaining proper psychiatric and psychological counselling and treatment, which will be required on both an ongoing and crisis basis.

### **Legislation**

45. The Plaintiff and the Pending BC Corrections Claimants rely upon the following enactments:
  - *Corrections Act*, RSBC 1979, c. 70 as amended from time to time.
  - *Canadian Charter of Rights and Freedoms*, *Constitution Act* 1982
  - *Negligence Act*, RSBC 1996, c. 333
  - *The Supreme Court Rules*
  - *Court Order Interest Act*, RSBC 1996, c. 79
  - *Crown Proceeding Act*, RSBC 1996, c. 89

**Plaintiff's address for service:**

Donovan & Company  
6<sup>th</sup> Floor  
73 Water Street  
Vancouver, BC, V6B 1A1

Slater Vecchio LLP  
18<sup>th</sup> Floor  
777 Dunsmuir St  
Vancouver, BC V7Y 1K4

Attn: Karim Ramji

Attn: Anthony Vecchio QC

**Fax number for service:** 604 688 4282 / 604 688 5197

**E-mail address for service:** karim\_ramji@aboriginal-law.com; aav@slatervecchio.com

**Place of trial:** Vancouver

The address of the registry is: 800 Smith Street, Vancouver, BC, V6Z 2E1

Date: 15/Oct/2019  
[dd/mmm/yyyy]

  
Signature of  
[ ] plaintiff [x] lawyer for plaintiff  
Karim Ramji/Anthony Vecchio QC

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

## Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Plaintiff claims damages against the Defendants for historical sexual abuse.

### Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☒ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

[Check all boxes below that apply to this case]

- ☐ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☒ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

**Part 4:**

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]

- *Corrections Act*, RSBC 1979, c. 70
- *Negligence Act*, RSBC 1996, c. 333
- *Canadian Charter of Rights and Freedoms, Constitution Act 1982*

## SCHEDULE 'A'

### LIST OF PENDING CORRECTIONS CLAIMANTS

H. Harrison	R. Bezanson
B. Nelson	A. McNicol
M. Whelan	D. Scott
D. De Lench	L. Heath
D. Fraser	T. Preddy
A. Gallup	R. Athwal
P. Graves	R. Harris
P. Van Osselaer	S. Stein
J. Moore	G. McEwan
S. O'Neill	G. Denomme
G. West	D. Raffle
D. Daignault	S. Connolly
J. Allin	D. Kinley
C. Hall	J. Madore
K. Lacroix	A. Cardinal
R. Gowen	D. Chernoff
E. Johnson	W. Clark
C. Kane	R. Parkins
D. Boutilier	L. Campbell
R. Katona	E. Diakew
J. Perwal	G. Jolicoeur
N. Neely	D. von Billings
A. Nowakowski	D. Craig
S. Owen	J. St. Jean
R. Petanic	P. Werner
P. Bevans	J. Mattie
M. Butler	M. Hutchinson
B. Blaney	R. Nott
T. Hayes	C. Reynolds
M. Watt	M. Antonius

No. \_\_\_\_\_  
Vancouver Registry

***In the Supreme Court of British Columbia***

Between

**John Zeitsoff**

Plaintiff

and

**Her Majesty the Queen in Right of the Province of British Columbia  
as represented by the  
Attorney General of British Columbia  
and  
Roderic David MacDougall**

Defendants

---

**NOTICE OF CIVIL CLAIM**

---

Karim Ramji

Donovan & Company  
6FL, 73 Water Street  
Vancouver, BC, V6B 1A1

Telephone: 604 688 4272

Facsimile: 604 688 4282

email: karim\_ramji@aboriginal-law.com